Siti Haida bt Ismail v Siti Maznah bt Yahya & Ors (as administrators for the estate of Yahya bin Shafii, deceased)

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO P-02(NCVC)(W)-2089–10 OF 2017
HAMID SULTAN, ABANG ISKANDAR AND KAMALUDIN MD SAID JJCA
3 AUGUST 2018

Land Law — Transfer — Fitness of instrument — Memorandum of transfer ('MOT') stated 'natural love and affection' as consideration for transfer when parties were not 'standing in near relation to each other' — Section 26(a) of the Contracts Act 1950 ('the CA') — Whether non-compliance with s 26(a) of the CA rendered the MOT an insufficient and void instrument unfit for registration under s 301(c) of the National Land Code ('the NLC') — Whether MOT null and void for illegality and liable to be set aside under s 340(2)(b) and (3) of the NLC — Whether medical evidence established transferor mentally demented and did not know effect and consequences of his action when he executed transfer — Whether transferee exercised undue influence and fraud over transferor

The respondents were the administrators of the estate of their deceased father, Yahya bin Shafii ('the deceased') who died at the age of 80 years after suffering from, inter alia, kidney failure and dementia. About seven months before the deceased died, the appellant (who was an undischarged bankrupt) was employed to look after him and take care of his day to day affairs. Three months before his death, the deceased and the appellant went to the land office where they affixed their respective thumbprints on a memorandum of transfer ('MOT') before the assistant land administrator to transfer a landed property ('the land') owned by the deceased to the appellant. The MOT stated that the consideration for the transfer was 'natural love and affection'. Following the compulsory acquisition of a portion of the land, the land administrator, unable to decide to whom the compensation for the acquisition (RM500,613) should be paid, deposited the same into court. On coming to know of these developments after the deceased's death, the respondents filed a High Court action to set aside the transfer of the land to the appellant and sought an order that the land be transferred back to the deceased's estate. They also sought damages for fraud, dishonesty and/or breach of trust and an order that the RM500,613 deposited in court be released to the deceased's estate. The respondents contended that the appellant had exercised undue influence over the deceased when he was ill and infirm and had taken advantage of his mentally demented state to fraudulently transfer the land into her name. The respondents argued that the transfer was void for absence of consideration because the appellant was not related to the deceased in any way and could not

claim 'natural love and affection' as consideration. Based on the medical evidence adduced by the respondents on the deceased's physical and mental condition, the High Court held that the deceased did not have the mental capacity at the material time to know the effect and consequences of his actions; that, consequently, his execution of the MOT was not voluntary; that the MOT was void under s 26(a) of the Contracts Act 1950 and that the appellant had unduly influenced the deceased into executing the transfer. The instant appeal was against the trial court's decision.

Held, unanimously dismissing the appeal:

(1) The trial judge's decision did not contain any error warranting appellate intervention. The decision was not shown to be perverse or plainly wrong. The medical evidence showed that the deceased was suffering from dementia and did not have the mental capacity to know the effect and consequences of his action. The trial judge had correctly found on balance of probabilities that the deceased had not voluntarily given the land to the appellant; that the latter, being an adjudged bankrupt, had the motive to obtain the land and the RM500,613 to settle her debts and had taken advantage of the deceased and caused the land to be fraudulently transferred to her (see paras 30, 32 & 38–40).

(2) The deceased and the appellant had only known each other for five months before the transfer of the land. They were clearly not 'standing in near relation to each other' within the meaning of s 26(a) of the Contracts Act 1950. The transfer in the MOT contravened s 26 of the Contracts Act 1950 thus rendering the MOT an insufficient and void instrument that was unfit for registration under s 301(c) of the National Land Code ('the NLC'). The MOT was clearly null and void for illegality and was liable to be set aside pursuant to s 340(2)(b) and (3) of the NLC (see paras 55, 57 & 61–62).

(3) The attesting officer and the land officer in the instant case should have been suspicious over the relationship between the appellant and the deceased and should not have proceeded with the attestation of the MOT and the adjudication and registration thereof. Given that there was insufficient proof of adoption, the deceased's demented mental state, the fact that he was unaccompanied by any of his family members and that the land was worth more than RM1m, the land officer should have required further evidence to satisfy himself that the transaction was in accordance with the law (see para 59).

[Bahasa Malaysia summary

Responden-responden adalah pentadbir-pentadbir harta pusaka mendiang arwah mereka, Yahya bin Shafii ('si mati') yang telah meninggal dunia pada umur 80 tahun selepas mengalami, antara lain, kegagalan buah pinggang dan

dementia. Lebih kurang tujuh bulan sebelum si mati meninggal dunia, perayu (seorang bankrap yang belum dilepaskan) telah diambil bekerja untuk menjaganya dan menguruskan hal ehwal hariannya. Tiga bulan sebelum kematiannya, si mati dan perayu telah pergi ke pejabat tanah di mana mereka telah menurunkan cap jari mereka masing-masingya pada memorandum pindak milik ('MPM') di hadapan penolong pentadbir tanah untuk memindah milik satu hartanah ('tanah tersebut') yang dimiliki oleh si mati kepada perayu. MPM tersebut menyatakan bahawa balasan untuk pindah milik itu adalah 'natural love and affection'. Berikutan pemerolehan wajib untuk sebahagian tanah itu, pentadbir tanah, yang tidak dapat memutuskan kepada siapa pampasan untuk pemerolehan itu (RM500,613) patut dibayar, telah mendepositkan yang sama kepada mahkamah. Setelah mengetahui tentang perkembangan tersebut selepas kematian si mati, responden-responden telah memfailkan tindakan Mahkamah Tinggi untuk mengetepikan pindah milik tanah tersebut kepada perayu dan memohon perintah agar tanah tersebut dipindah milik balik kepada harta pusaka si mati. Mereka juga memohon ganti rugi untuk fraud ketidakjujuran dan/atau pelanggaran kepercayaan dan perintah agar RM500,613 yang didepositkan kepada mahkamah dilepaskan kepada harta pusaka si mati. Responden-responden menegaskan bahawa perayu telah menggunakan pengaruh yang tidak sewajarnya ke atas si mati semasa dia sakit dan tidak berupaya dan telah mengambil kesempatan ke atas keadaan mentalnya yang pelupa untuk pemindah milik secara menipu tanah tersebut kepada namanya. Responden-responden berhujah bahawa pendah milik itu tidak sah kerana tiada balasan oleh sebab perayu tiada kaitan dengan si mati dalam apa cara dan tidak boleh menuntut 'natural love and affection' sebagai balasan. Berdasarkan keterangan perubatan yang dikemukakan oleh responden-responden berhubung keadaan fizikal dan mental si mati, Mahkamah Tinggi memutuskan bahawa si mati tidak mempunyai keupayaan mental pada masa matan untuk mengetahui kesan dan akibat tindakannya; bahawa, berikutan itu, pelaksanaan MPMnya adalah tidak sukarela; bahawa MPM tersebut adalah tidak sah di bawah s 26(a) Akta Kontrak 1950 dan bahawa perayu telah mempengaruhi dengan tidak wajar si mati untuk melaksanakan pindak milik itu. Rayuan ni adalah terhadap keputusan mahkamah perbicaraan.

Diputuskan, sebulat suara menolak rayuan:

(1) Keputusan mahkamah tidak mengandungi apa-apa kekhilafan yang mewajarkan campur tangan mahkamah rayuan. Keputusan tersebut tidak menunjukkan ia jelas salah atau terpesong. Keterangan perubatan menunjukkan bahawa si mati mengalami dementia dan tidak mempunyai keupayaan mental untuk mengetahui kesan dan akibat tindakannya. Hakim perbicaraan adalah betul kerana mendapati atas imbangan kebarangkalian bahawa si mati tidak secara sukarela memberikan tanah tersebut kepada perayu; bahawa perayu, yang

merupakan seorang yang diisytiharkan bankrap, mempunyai motif untuk memperoleh tanah tersebut dan RM500,613 itu untuk menyelesaikan hutangnya dan telah mengambil kesempatan ke atas si mati dan menyebabkan tanaht ersebut dipindah milik secara fraud kepadanya (lihat perenggan 30, 32 & 38–40).

(2) Si mati dan perayu hanya mengetahui satu sama lain selama lima bulan sebelum pindah milik tanah tersebut. Mereka jelas bukan 'standing in near relation to each other' dalam maksud s 26(a) Akta Kontrak 1950. Pindah milik MPM tersebut adalah bertentangan dengan s 26 Akta Kontrak 1950 oleh itu menyebabkan MPM tersebut suatu instrument yang tidak mencukupi dan tidak sah yang tidak sesuai untuk pendaftaran di bawah s 301(c) Kanun Tanah Negara ('KTN'). MPM tersebut jelas terbatal dan tidak sah keran menyalahi undang-undang dan boleh diketepikan menurut s 340(2)(b) dan (3) (lihat perenggan 55, 57 & 61–62).

(3) Pegawai yang memperakui dan pegawai tanah dalam kes ini sepatutnya berasa syak wasanga tentang hubungan antara perayu dan si mati dan tidak patut meneruskan perakuan MPM tersebut dan pengisytiharan dan pendaftaran tersebut. Berdasarkan ketiadaa bukti yang mencukupi yang dikemukakan, keadaan mental dementia si mati, hakikat bahawa dia tidak ditemani oleh mana-mana ahli keluarganya dan bahawa tanah tersebut bernilai melebihi RM1 juta, pegawai tanah itu sepatutnya meminta keterangan lanjut untuk meyakinkan dirinya sendiri bahawa transaksi itu adalah menurut undang-undang (lihat perenggan 59).]

Notes

For cases on fitness of instrument, see 8(3) *Mallal's Digest* (5th Ed, 2015) paras 5819–5820.

Cases referred to

Chua Eng Wei & Anor v Liow Eng Keong & Anor [2015] 4 CLJ 1027, CA (refd)
Frazer v Walker and Others [1967] 1 AC 569, PC (refd)
Khaw Cheng Bok & Anor v Khaw Cheng Poon & Ors [1998] 3 MLJ 457, HC (refd)
Lim Kim Hua v Ho Chui Lan & Anor [1995] 3 MLJ 165, HC (refd)
Loi Hieng Chiong v Kon Tek Shin [1983] 1 MLJ 31, FC (refd)
Merbok Hilir Bhd v Sheikh Khaled Jassem bin Mohammad Jassem Al-Thani (t/a Petroserv General Trading Establishment) and other appeals [2013] 5 MLJ 407; [2013] 8 CLJ 309, CA (refd)
PJTV Denson (M) Sdn Bhd & Ors v Roxy (Malaysia) Sdn Bhd [1980] 2 MLJ 136; [1980] 1 LNS 55, FC (refd)
Sivalingam a/l Periasamy v Periasamy & Anor [1995] 3 MLJ 395, CA (refd)
Tan Ying Hong v Tan Sian San & Ors [2010] 2 MLJ 1; [2010] 2 CLJ 269, FC (refd)

Tang Meng Hock v Tang Ming Seng [2010] 1 MLJ 33; [2010] 1 CLJ 208, CA (refd)
Tengku Abdullah Ibni Sultan Abu Bakar & Ors v Mohd Latiff bin Shah Mohd & Ors and other appeals [1996] 2 MLJ 265, CA (refd)

Legislation referred to

Contracts 1950 s 26, 26(a)
Land Acquisition Act 1960 ss 12, 38, Forms D, H, K, N
National Land Code ss 256(4), 259(3), 292, 292(1), 301, 301(c), 340, 340(2), (2)(b), (3), 344, Parts 13, 14, 15, 16, 17, Form 14A
Stamp Act 1949

Appeal from: Civil Suit No PA-22NCVC-90–05 of 2016 (High Court, Pulau Pinang)

Yap Mong Jay (Choo Jun Lin and Wong Lian Chin with him) (Tan Shuaib & Co) for the appellant.
KT Raja (Geetar Kaur with him) (Cheah Kah Peng & Co; Getar Kaur & Co) for the respondents.

Kamaludin Md Said JCA:

INTRODUCTION

[1] There are two separate appeals filed by the appellant (defendant) as follows:

(a) Civil Appeal No P-02(NCVC)-2079–10 of 2017 against the decision by the learned high judge on 18 September 2017 where the respondents (plaintiffs) claim was allowed, inter alia, a declaration that the transfer of a piece of land held under GM 789, Lot 1131, Mukim 11, Daerah Barat Daya, Negeri Pulau Pinang from the late Yahya bin Shafii to the appellants is null and void and that the said land be returned to the estate of Yahya bin Shafii for distribution to the plaintiffs ('appeal on land 2079'); and

(b) Civil Appeal No P-02(NCVC)-2089–10 of 2017 against the decision by the learned high judge on 18 September 2017 in respect of the compensation monies from the acquisition of 161 sqmt of the land in the sum of RM500,613 deposited at the High Court at Penang under Originating Summons No 24NCVC-1068–11 of 2014 ordered to be released to the plaintiffs ('appeal on money 2089').

[2] Both the appeals are heard together.

[3] The plaintiffs institute a suit under Civil Suit PA-22NCvC-90–05 of 2016 as co-administrators/administratrix to their father's estate ie Yahya bin Shafii, deceased ('the said deceased'). A

[4] The suit is to recover property known as Lot 1131, Mukim 11, Daerah Barat Daya, Negeri Pulau Pinang held under GM 789 ('the said land') which was in the name of the deceased and transferred to the defendant by the said deceased during his lifetime. B

[5] The plaintiffs also filed the application for release of the compensation money held under 24NCVC-1068–11 of 2014. C

[6] The learned judge allowed the claim by the plaintiffs to declare the transfer of the said land from the deceased to the defendant via Form 14A of the National Land Code dated 14 July 2014 which was registered on 11 August 2014 under Presentation No 705SC2014001785 at Pejabat Pentadbir Tanah Daerah Pulau Pinang as null and void and the said land was ordered to be reverted to the deceased name and/or to the estates of the deceased (judgment at pp 15–17 of *RR Jld* 1 (*Bahagian* A)). D

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[7] The learned judge also allowed the claim by the plaintiffs to declare that the defendant does not have any interest over the compensation sum of RM500,613 deposited in the High Court under Originating Summons No 24 NCVC-1068–11 of 2014 related to the acquisition of part of the said land registered under the deceased name during the material time and ordered that the compensation sum to be released to the plaintiffs as the administrator of the estates of the deceased (judgment at pp 12–13 of *RR Jld* 1 (*Bahagian* A)). F

BACKGROUND FACTS

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[8] The plaintiffs are the children of the deceased who passed away on 31 October 2014 at the age of 80 years. The deceased had stayed with the first plaintiff for 5–6 years after he was diagnosed with kidney failure and having to rely on dialysis treatment three times a week. The first plaintiff together with the rest of the plaintiffs took care of their father. He then stayed at No 70 Lorong Mahsuri 10 Bayan Baru which was still nearby the first plaintiff's house. Later he moved out and stayed at a condominium known as 'D' Piazza' nearby the first plaintiff. His third wife was sometimes away and the plaintiffs took care of him in ensuring he has food, medicine and taken for treatment. H

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[9] The deceased having to be served in the British military was fixed with his ways and insisted to stay alone. However, he could not be left alone due to his health and mental condition at that time. The plaintiffs jointly looked over his welfare and his needs.

[10] The first plaintiff being a matron at the hospital would care for her father in ensuring his wellbeing. The first plaintiff juggled between her time at work and caring for her father and her own family on top of being a single mother. The first plaintiff took care of his meals, medicines and also the constant dialysis treatment ie three times a week, with a duration of four hours each treatment. She also handled all the deceased's banking needs, financial issues and his assets. The relationship between the first plaintiff and the deceased was very close. They met so frequently, as she had to take care of him. At the time the deceased was under her care, he was doing fine. All his medical and dialysis treatments were arranged for him by the first plaintiff.

[11] The second plaintiff is a pharmacist and he is a lecturer at Pusrawi International College of Medical Sciences. He resides at Kuala Lumpur. He visits his father at weekends and during holidays and was in constant contact by the telephone. During festival celebrations the whole family would meet and celebrate the occasion with him. In short every time they met it appears it is a celebration day.

[12] The third plaintiff is housewife residing in Selangor and have a good relationship with the deceased. She frequently bought things for the deceased during his lifetime. She visited the deceased once a week or during holidays.

[13] The fourth plaintiff is a teacher and resides in Kangar. He visited his father every last week of every month and during festival holiday. He always took his father out to eat special food that his father craved for.

[14] The defendant was staying near the deceased condominium and was the deceased's neighbor. She took care of the deceased by, amongst others, handling his day to day affairs, cleaning and maintaining his home, driving him to the Hospital for his dialysis treatments and managing his daily diet as well as his medication. She also helped him in collecting rents for the deceased due from the deceased's properties.

[15] On 1 June 2014, the defendant contended that the deceased transferred RM30,000 to the defendant's daughter. He asked the defendant to hold the money and told her that she would need the money later. The deceased also asked her not to use the money or tell anyone about the same.

[16] On 14 July 2014, the deceased asked the defendant to take him to the Pejabat Daerah dan Tanah Barat Daya where he requested for a copy of the issue document of title for the said land. Upon receiving the same, the deceased informed the defendant that he wanted to transfer the said land to her.

[17] The defendant gave evidence that whilst she initially refused to accept

the transfer of the said land to her, the deceased insisted on the same and had asked her to fill in the Form 14A with the help and assistance of the employees at the land office. Having done so, both the defendant and the deceased had affixed their respective thumb prints on the form in front of the Penolong Pentadbir Tanah, Daerah Barat Daya, En Mohamad Rozee bin Nordin (SD1). The defendant submitted the duly executed Form 14A for adjudication and was informed via letter dated 5 August 2014 that stamp duty for the instrument of transfer was RM33,510. The defendant contended that the deceased asked her to use the RM30,000 which was previously given to her and to make up the difference on her own. After the stamp duty and registration for Form 14A were paid on 11 August 2014, the defendant became the duly registered proprietor of the said land.

[18] On 20 August 2014, the hearing of the acquisition of the land pursuant to s 12 of the Land Acquisition Act 1960 was held but was adjourned to 3 September 2014. The Pentadbir Tanah dan Daerah Barat Daya was unable to decide whether the deceased was entitled to the compensation monies amounting to RM511,613. Consequently, the Pentadbir Tanah dan Daerah Barat Daya deposited the compensation monies into the High Court under Civil Suit No 24 NCVC-1068–11 of 2014.

[19] The deceased passed away on 31 October 2014. On 12 December 2014, the defendant via Borang N pursuant to s 38 of the Land Acquisition Act 1960 filed a land reference application to the High Court to determine who is entitled to the compensation monies. Borang K was issued and registered on 16 May 2016 on the land title.

[20] The plaintiffs took legal action against the defendant on 23 March 2016 seeking the following orders:

(a) a declaration that the transfer of the Land from the deceased to the defendant through the Form 14A dated 14 July 2014 and registered at the Pejabat Pentadbir Tanah Daerah Pulau Pinang on 11 August 2014 to be null and void;

(b) a declaration that the memorandum of transfer in the form of Form 14A dated 14 July 2014 for the transfer of the whole of the land is null and void and ineffective; and

(c) damages for fraud, dishonesty and/or breach of trust.

[21] It was the plaintiffs' pleaded case that the defendant by manipulating, misconduct, cheating, distorting the facts and exploitation of the deceased's condition had caused the deceased to affix his thumbprint onto the completed

Form 14A of National Land Code dated 14 July 2014 before the assistant land administrator of the land office and registered the Form 14A on 11 September 2014 on the land title.

THE ISSUES BEFORE THE HIGH COURT

[22] At the High Court the learned judge set out four broad issues before her as follows:

(a) whether the defendant had by way of manipulation, misconduct, undue influence and fraud caused the deceased to transfer the said land and monies to the defendant or defendant's agent;

(b) whether the deceased had mental capacity to affix his thumbprint onto the transfer form dated 14 July 2014;

(c) whether the deceased had mental capacity when he withdrew money from Tabung Haji and Saham Bumiputra trust account; and

(d) whether the ownership of the defendant to the title in the said land is indefeasible.

DECISION OF THE HIGH COURT

[23] The learned judge after hearing the evidence of witnesses and documentary evidence and also the submissions of the plaintiffs and the defendant made her finding of facts and decided as follows:

(a) that it was impossible for the deceased to have completed the transfer of the land and the RM30,000 and that when the said transactions were made, the deceased did not have the mental capacity to know the effect and consequences of his action (see: p 23 of the grounds of judgment);

(b) that the facts do not show that the deceased had voluntarily given the land to the defendant and that to the contrary, the defendant had the motive to obtain the RM500,613 as well as the land for herself to settle her debt (see: p 24 of the grounds of judgment);

(c) that the deceased had affixed his thumbprint to the Form 14A without being aware or knowing the effect of his actions (see: p 24 of the grounds of judgment);

(d) that it was unreasonable to say that the defendant had taken advantage by directing the deceased to affix his thumbprint to show that the transfer of the land was genuine;

(e) that the relevant Form 14A is invalid, void and should be set aside pursuant to s 26(a) of the Contracts Act 1950; and

(f) that the defendant had unduly influenced the deceased to transfer the said land to her name.

[24] The learned judge allowed the claim by the plaintiffs in respect of the Land and damages as appears in the judgment (see: pp 15–17 of *RR Jld* 1 (*Bahagian* A)):

(a) Adalah diisytiharkan bahawa pemindahan hartanah Yahya bin Shafii, simati iaitu hartanah dan hereditament yang dikenali sebagai Lot 1131, Mukim 11, Daerah Barat Daya, Pulau Pinang yang terkandung di bawah Geran Mukim No 789 dengan premis yang terdiri di atasnya (selepas ini dirujuk sebagai hartanah tersebut) daripada Yahya bin Sahfii kepada Siti Haida bt Ismail, defendan melalui Borang 14A Kanun Tanah Negara bertarikh 14-7-2014 yang telah didaftarkan pada 11-8-2014 di bawah Perserahan No: 0705SC2014001785 di Pejabat Pentadbir Tanah Daerah Pulau Pinang adalah tidak sah dan terbatal;

(b) Hartanah tersebut dan/atau premis tersebut di atas dikembalikan (reverted) kepada nama Yahya bin Shafii, simati dan/atau aset Yahya bin Shafii, simati;

(c) Pentadbir Tanah Daerah Barat Daya, Pulau Pinang dan/atau mana-mana pihak berkuasa yang berkaitan diarahkan dan hendaklah mengambil segala langkah-langkah yang diperlukan untuk memberi kesan kepada Perintah ini;

(d) Penolong Kanan Pendaftar Mahkamah Tinggi adalah dikuasakan untuk menandatangani segala dokumen-dokumen dan/atau mengeluarkan segala surat yang diperlukan untuk memberi kesan kepada Perintah di sini;

(e) Satu injuksi menahan Defendan, perkhidmatan dan/atau ejennya daripada memajak, mencagar, menyewa, menjual atau dengan apacara pun melupuskan premis dan hartanah tersebut yang ketika ini adalah di bawah nama Defendan sehingga muktamad bicara penuh guaman sibil di sini;

(f) Defendan hendaklah dalam tempoh empat belas (14) hari dari tarikh perintah dibuat memberi suatu akaun semua wang-wang dan benefit yang diterima oleh Defendan, perkhidmatan dan/atau ejennya daripada apa-apa urusan atas hartanah tersebut dan/atau akaun di tabung Haji;

(g) Defendan hendaklah dalam tempoh empat belas (14) hari dari tarikh perintah dibuat memberi suatu akaun semua wang-wang dan benefit yang diterima oleh Defendan daripada apa-apa urusan atas hartanah tersebut dan/atau akaun di Amanah Saham Berhad;

(h) Ganti rugi Am hendaklah ditaksir oleh Timbalan Pendaftar/Penolong Kanan Pendaftar Mahkamah Yang Mulia ini.

(i) Defendan membayar faedah pada kadar 4% setahun ke atas ganti rugi am yang dibenarkan oleh Mahkamah Yang Mulia ini dikira dari tarikh pemfailkan guaman sivil di sini sehingga tarikh realisasi;

(j) Defendan membayar kos sebanyak RM50,000.00 kepada peguam Plaintif-Plaintif.

[25] The learned judge also granted an order that the compensation sum be released to the plaintiffs as appears in the judgment (see: pp 12–13 of *RR Jld* 1 (*Bahagian* A)):

1. Adalah diisytiharkan bahawa Defendan tiada sebarang kepentingan ke atas wang pampasan sebanyak RM 500,613.00 yang didepositkan di Mahkamah di bawah Saman Pemula No: 24 NCVC-1068-11/2014 mengenai pengambilan sebanyak 161 meter persegi hartanah yang dikenali sebagai Lot 1131, GM 789 Mukim 11, Daerah Barat Daya, Pulau Pinang beserta sebuah premis yang terdiri di atasnya yang didaftarkan atas nama Yahya bin Shafii pada masa matan;

2. Wang pampasan RM 500,613.00 yang didepositkan di Mahkamah di bawah Saman pemula No: 24 NCVC-1068- 11/2014 bagi pengambilan sebanyak 161 meter persegi hartanah yang dikenali sebagai Lot 1131, GM 789 Mukim 11, Daerah Barat Daya, Pulau Pinang beserta sebuah premis yang terdiiri di atasnya dilepaskan/diberikan kepada Plaintif-Plaintif sebagai Pentadbir Harta Pusaka Yahya bin Shafii berdasarkan kepentingan berdaftar Yahya bi Shafii, si mati tersebut pada masa matan;

3. Pentadbir Tanah Daerah Barat Daya/Pendaftar hakmilik Tanah, Pulau Pinang memberi kesan dan efek kepada Perintah ini.

THIS APPEAL

[26] The defendant was not happy with the learned judge's decision and appealed to the Court of Appeal, setting out her grounds of appeal as follows:

(a) in all the circumstances of the case, the learned judge had erred in law and in fact in allowing the reliefs sought for by the plaintiffs, inter alia, the declaration that the compensation monies deposited in the High Court in Originating Summons No 24 NCVC-1068–11 of 2014 for acquisition of 161 sqmt of part of the land known as GM 789, Lot 1131, Mukim 11, Daerah Barat Daya, Negeri Pulau Pinang;

(b) in allowing the reliefs sought by the plaintiffs, the learned judge had erred in law and in fact in failing to duly consider, inter alia, the following:

(i) the Borang H dated 3 November 2014 was issued after the defendant became the registered owner of the land on 11 August 2014; and

(ii) the acquisition of the land was only completed on when the Borang K registered on 16 May 2016 when the defendant was already the registered owner of the land;

(c) the learned judge had erred in law and in fact in deciding that the plaintiffs are entitled to the compensation monies because Borang D, the proposal for acquisition of land, was registered on 18 July 2014 before the defendant became the registered owner of the land.

OUR DECISION

[27] The defendant had filed her written submission and gave her grounds challenging the learned judge's decision in the submission. She had also submitted orally. The plaintiffs had also filed their written submissions opposing the appeal and defending the learned judge's decision.

[28] At the outset, we asked the defendant's counsel the pertinent question of whether the transfer of the said land was valid when the deceased who was suffering dementia affixed his thumbprint on the completed Form 14A on 14 July 2014. If the deceased did not have the mental capacity to know the effect and consequences of his action, how can the transfer of the land and RM30,000 to the defendant be said to be made voluntarily.

[29] The defendant's counsel was not really answering the question but he submitted that the deceased had mental capacity to affix his thumbprint on the Form 14A and that the deceased knew the effect and consequences of his action.

[30] Be that as it may, we had heard counsels' oral submissions and had read the written submissions and the learned judge's ground of judgment and the record of appeal. It is our firm finding that the learned judge's decision does not contain any appealable error for us to intervene. The appellate court would normally intervene and correct the decision of the lower court if the decision is perverse or is shown that the impugned decision can be proved be plainly wrong.

[31] The jurisdiction of the Court of Appeal to intervene against a decision of the High Court has to rest on settled principles; the court should only upset a decision of the High Court where there is a clear error leading to a perverse finding or resulting in miscarriage of justice, particularly where the lower court has decided on the basis of discretion.

(See: *Merbok Hilir Bhd v Sheikh Khaled Jassem bin Mohammad Jassem Al-Thani (t/a Petroserv General Trading Establishment) and other appeals* [2013] 5 MLJ

407; [2013] 8 CLJ 309; *Sivalingam a/l Periasamy v Periasamy & Anor* [1995] 3 MLJ 395).

[32] We say this because the evidence led before the High Court shows that the deceased did not have the mental capacity to know the effect and consequences of his action. The evidence revealed that the deceased suffered from dementia among others.

[33] There is evidence from two doctors before the court as follows:

(a) a medical report dated 20 October 2014 from Jabatan Psikiatri dan Kesihatan Mental Hospital Pulau Pinang was produced and marked as exh P21. The plaintiffs procured evidence from Dr Roohana (PW8) (refer pp 1166–1168 of *RR Jld* 2F);

(b) the defendant's witness SD8 Dr Prem gave evidence before the court without the benefit of examining the deceased nor having seen the full clinical reports. His opinion is based on the medical report by Dr Roohana (PW8);

(c) Dr Roohana bt Abdul Hadi, a medical doctor for the past 11 years and has completed psychiatrist training in November 2014 and *gazetted* as a psychiatrist on 4 October 2016. She was at the Psychiatric Department the whole of 2014. She had testified based on the medical report dated 20 October 2014. Extract from the medical report (refer pp 1166–1168 of *RR Jld* 2F).

PW8 testified the following evidence from the Medical Report in summary:

(i) all the transaction was done using patient's thumbprint (patient used to sign all his documents);

(ii) based on the history given, suspected that they were presence of undue influence to transfer all his money and properties to the caretaker;

(iii) for the past one week prior to admission, patient was noted to be talking irrelevantly. He was disoriented and can't recognize his family members and can't answer to question properly;

(iv) for the assessment of testamentary capacity:

(A) patient was unaware of all his money/assets/ properties;

(B) he was unaware that he had transferred and withdrew all his properties/money; and

(C) he can't tell the extent of his estate/property

(v) likely that the patient didn't have the capacity during all the transaction.

Patient was disorientated as to the time, place and person. His attention and concentration, memory, judgment and insight were all poor;

(vi) patient was unable to perform clock drawing test;

(vii) he suffers from multifocal infarcts;

(viii) diagnosis (*diagnosis*):
delirium with underlying dementia (Alzheimer's type);

(ix) patient was discharge from CRW on the 5 September 2014 but readmitted on the 8 September 2014 to CRW for aggressive behavior; had sudden onset of behavioral changes and was rather disturbed at home. He was noted to be talking non-sense, screaming and shouting for no apparent reason and was rather disorientated.
PW8 further testified that he sustained a fracture and was bed ridden during that time.

[34] Based on the report, delirium with underlying dementia (Alzheimer's type) is a recognised problem in society and persons and professionals who are close to such patient can exploit and take advantage of them.

[35] On the contrary, we noted the defendant had also called on evidence from Dr Prem who testified solely on the statement recorded in the history of presenting complaints in the medical report by Dr Roohana above.

The clock drawing test is another form of cognitive assessment but it is not part of the MMSE as it is a separate test.

He also testified that a CT had been done by the earlier doctor:

(a) Alzheimer dementia progresses in a very gruel state. It's almost a linear graph like a deterioration. Where else in vascular dementia, it goes in a step wise manner so they will plato for a while, and suddenly there will be a drop in their cognitive functioning and then it plato for years but usually it's a few every three to six months but if you look at date on one can actually ascertain how fast the drops are. So it goes down in a steps wise fashion. That's vascular dementia;

(b) deceased was prevented from seeing the defendant? Yes. Could cause some separation trauma to him ... it depends on the type of relationship between whichever parties' involved. If it was a very mutually dependent relationship yes it can cause a lot of problems and that can range from an acute stress reaction to depression, I really don't know what else to say to this. It can I mean it but it all depends on what the relationship is;

(c) the deceased Yahya was suffering from renal failure or kidney failure, he testified there is high probability that patient will undergo dementia, patient suffering from renal failure alright they there are chances that they will suffer dementia. He testified that,it is very common in older people. When an older person has dementia has confusion the first thing we think about or if they hallucinate first thing we think about is ah a form of pneumonia or urinary tract infection. Those are the most common causes sometimes they become dehydrated. And because of that their sodium level goes down so that can cause delirium. There are perhaps three or 400 causes of delirium and once you are sure that it's only delirium that you are dealing with support them physically and let it clear if it's an infection of course you give antibiotics if its low sodium, you attempt to increase the sodium slowly;

(d) he also testified that it is one of symptom hat if a patient can recall his past life we are talking about 30, 40 or 50 years ago story that is a symptom that the patient could be suffering from dementia. Can't cure it but can slow it down;

(e) he also testified that Delirium is acute;

(f) he agreed that he has not seen the patient, so he will not know the exact condition and he cannot judge Dr Roohana's report as right or wrong, right;

(g) he also testified that when the urea level for renal failure patient:

> The consequence of ah they can, they can develop delirium. And it can manifest in many different ways. They can hallucinate, alright, they can get confused, so they may be disorientated, they may have memory problems, and it's usually more for rent memory. Recent memory. So, will have a very perplexed look, they can be scared, and with hallucinations, they may even develop illusions. So say they're lying in a hospital bed, if there's a fan spinning, they might look at the fan and misinterpret it and think it's a parangs. So they become very agitated, they start pulling their tubes out, not because they are angry, but because they are scared. So that is delirium. So you treat the cause, unfortunately people who are older, the time it taken for the brain to recover from such an insult, whether it's low sodium or head trauma or bleed in the brain, it takes longer. So in a young person, if your sodium level say goes down, within three days they're better. But in older people it takes a week, sometimes eight nine days, then it ... But you have to correct the underlying cause first. You don't correct it; the delirium delirium doesn't go off.
>
> And most of the time, they end up breaking their hips because they are confused, they don't know they're on a bed in a hospital which is higher, they tried they think they are you know on the floor, they roll down and they fracture their hips, so those are the con co ah consequences. Complications.

(h) these differential in the urea level, it's more frequent in renal failure

patient:

> But once you're on dialysis. If there's kidney damage, there is another indicator call creatinine. That measures chronic kidney disease. So that will be high, and it can be high and it doesn't really matter because it is not an acute thing. That gives you a state of your kidney. Suppose if you're diabetic. Your blood test doesn't give you an actual indication, it tells you now, but something calls a HbAI\1C will tell you for the past three weeks, how two or three weeks how your sugar state is. So similarly, urea if you go for dialysis it will come back to normal. Or almost normal. So, but depending on how high that goes, if you say from a level of fifteen, twelve fifteen it suddenly shoots up to sixty, I would expect even without looking at the patient I will you that the patient will be confused. You know, but if you say they have a creatinine of four hundred which means they've been having disease and the urea goes up from twenty to forty, I would say the body can handle it. They won't get confused.

(i) he testified that multifocal infarcts suffered by Yahya bin Shafii is not reversible.

[36] In respect of the evidence above, the plaintiffs had submitted that Dr Prem had not seen the patient. Therefore, Dr Prem agreed that he did not have the clinical report which is day to day report. The reports where the nurses normally write or the doctor write there when they do visit the patient during the routine visit and there is also such thing as ward report. He also agreed that without these additional reports his findings may not to be 100% accurate.

[37] We agree with the plaintiffs and we find the evidence by Dr Prem does not carry much weight because he did not examine, observe, see or even had the benefit of seeing any clinical notes of the deceased and as admitted by him. He is merely giving his opinion on a general term.

[38] In the circumstances of this case and the report and evidence from doctors on the mental state of the deceased, the learned judge cannot be wrong when she held that the deceased had not voluntarily given the land to the defendant and had the motive to obtain the RM500,613 as well as the land herself to settle her debt. Based on the same reason, it was not wrong for the learned judge to conclude that it was not unreasonable to say that the defendant had taken advantage by directing the deceased to affix his thumbprint to that the transfer of the land was genuine.

[39] Therefore, based on the evidence adduced and on the balance of probabilities proof, the learned judge had made the correct decision. We also believed that the defendant upon the pretext of giving care to the deceased in

A settling her own personal debts secreted, misappropriated and fraudulently transferred the said landed property to her name and withdrew savings from the deceased's account.

B **[40]** This is supported by the fact that the defendant who was already buried under her debt with adjudication and receiving orders adjudged on her took advantage of the situation and caused the deceased to transfer the landed property to her name.

C **[41]** Interestingly, in the submission, the defendant at one point argued that when the transfer of the land was registered, she became the registered owner of the land and her title to the land is indefeasible under the National Land Code.

D **[42]** We did not agree with the submission because the ownership of title to the land can also be indefeasible on certain conditions. Section 340(2) of the National Land Code provides as follows:

(2) The title or interest of any such person or body shall not be indefeasible —

(a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or

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(b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or

(c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.

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(3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in sub-section (2) —

(a) it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and

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(b) any interest subsequently granted there out shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested:

Provided that nothing in this sub-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.

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[43] Section 340 of the NLC introduced into our land law the concept of indefeasibility of title. This is central to the system of registration of title under the Torrens system. Raja Azlan Shah (as His Royal Highness then was) in *PJTV Denson (M) Sdn Bhd & Ors v Roxy (Malaysia) Sdn Bhd* [1980] 2 MLJ 136; [1980] 1 LNS 55 observed that 'the concept of indefeasibility of title is so deeply embedded in our land law that it seems almost trite to restate it'. Indefeasibility is defined by the Privy Council in *Frazer v Walker and Others* [1967] 1 AC 569 at p 580 to mean:

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> The expression not used in the Act itself, is a convenient description of the immunity from attack by adverse claim to the land or interest in respect of which he is registered, which a registered proprietor enjoys. This conception is central in the system of registration. It does not involve that the registered proprietor is protected against any claim whatsoever; as will be seen later, there are provisions by which the entry on which he relies may be cancelled or corrected, or he may be exposed to claims *in personam*. These are matters not to be overlooked when a total description of his rights is required. But as registered proprietor, and while he remains such, no adverse claim (except as specifically admitted) may be brought against him.

[44] Indefeasibility can be immediate or deferred. The distinction between the two is well explained in para 404 of *The National Land Code, A Commentary* (Vol 2) by Judith Sihombing which reads:

> There are two types of indefeasibility; immediate and deferred. The factor which distinguishes the two is the common law effect given to the instrument even after registration; in addition; in a regime of deferred indefeasibility, the role of registered volunteer might be more relevant than under an immediate indefeasibility system. If, after registration has occurred, the system then ignores the substance, form and probity of the instrument used to support the registration, the system is likely that of immediate indefeasibility. Thus, registration has cured any defect in the instrument being registered. If the instrument, despite registration, still has the power to affect the registered interest or estate, the system will probably be that of deferred indefeasibility.

[45] In short, immediate indefeasibility means that the immediate registered title or interest of the proprietor or transferee immediately to the vitiating circumstances will be conferred statutory protection despite the existence of any vitiating circumstances. In the case of deferred indefeasibility, the indefeasibility only comes to be attached to the title or interest upon a subsequent transfer. Thus, the difference between immediate and deferred indefeasibility hinges on the effect of registration vis vis the title or interest.

(See: The Federal Court case of *Tan Ying Hong v Tan Sian San & Ors* [2010] 2 MLJ 1; [2010] 2 CLJ 269.)

[46] In the circumstances of this case, we say that the defendant's ownership of the title or indefeasibility of the title does not enjoy immunity from attack by adverse claim to the land or interest by the plaintiffs in respect of which she is registered. It has been proven that the transfer and registration of the land into the defendant's name had been made through void instrument, fraud or undue influence by the defendant. Hence, the transfer and registration was tainted with illegality. Therefore, the defendant's title is defeasible by reasons stated hereunder.

[47] We had examined the Form 14A dated 14 July 2014. We noted that at the first page of the Form, the consideration for the transfer of the land is stated therein the words 'KASIH SAYANG' (natural love and affection) and there is deceased's' thumbprint affixed onto the Form. In other words, the land was not transferred by payment of certain amount of money as consideration. It was transferred for reason of deceased and defendant having blood relationship, which is recognised by law as good consideration for natural love and affection.

[48] However, the facts revealed that the defendant and the deceased had no close or intimate relationship to amount to near relation. She was the caretaker of the deceased at some point of time. According to the plaintiffs, the defendant was paid RM300 per month from the deceased's pension and rental received by him on his properties on monthly basis. The argument on behalf of the plaintiffs is that the land was transferred without consideration therefore, the transfer was void and have no effect.

[49] Section 26 of the Contracts Act 1950 provides that an agreement without consideration is void, unless:

> It is in writing and registered.
>
> (a) it is express in writing and registered under the law (if any) for the time being in force for the registration of such documents, *and is made on account of natural love and affection between parties standing in a near relation to each other*;
>
> Or is a promise to compensate for something done
>
> (b) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or
>
> Or is a promise to pay a debt barred by limitation law
>
> (c) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part of debt of which the creditor might have enforced payment but for the law for the limitation of suits.

[50] Section 301 of the National Land Code provides that:

An instrument shall be fit for registration under this Part if, but only if, the following conditions are satisfied.

(a) that it is one of the classes of instrument set out in sub-s (1) of s 292 as authorised to be so registered.

(b) that it complies with:

(i) the provisions of Part 13 as to the farm, content, execution and attestation of instruments of dealing generally, and the persons and bodies capable of taking thereunder; and

(ii) the provisions of Part 14–17 with respect to instruments of the particular class in question;

(c) that the dealing which is effect is not contrary to any prohibition or limitation imposed by this Act or any other written law for the time being in force, or to any restriction in interest to which the land in question is for the time being subject;

(d) that it does not declare or, except as permitted by s 344, disclose the existence of any trust; and

(e) that it is duly stamped in accordance with the provisions of the Stamp Act 1949.

Provided that where a certificate of sale has been given to a purchaser on respect of any charged land or lease under sub-s (3) of s 259 or sub-s (4) of s 256, any requirement to obtain the consent of the State Authority relating to the restriction in interest to such land or lease in question shall not be application.

[51] In the present case, it is an undisputed fact that the memorandum of transfer ('MOT') dated 14 July 2014 is a transfer from the deceased to the defendant under the consideration of 'Kasih Sayang' ('love and affection').

[52] As correctly submitted by the plaintiffs that the transfer is not given as a 'Gift' or 'Hibah'. The defendant has been misguided on the difference of 'Kasih Sayang' and 'gift'. The defendant has throughout her evidence and pleaded defence states that is was a gift (*hibah*) whereas the transfer is based on the consideration of 'love and affection' (see: the Form 14A at pp 1162–1165 *RR Jld* 2F).

[53] In *Chua Eng Wei & Anor v Liow Eng Keong & Anor* [2015] 4 CLJ 1027 the court held that:

(1) Section 26 of the Act renders an agreement made without consideration to be valid *if it is made on account of natural love and affection between parties standing in a near relation to each other. The words 'near relatives' refer to those who are closely related such as one's parents, brothers or sisters.* On the facts, the plaintiffs and defendants did not stand in a near relation to each other. Further, there was no evidence to show that the parties were related. (paras 10 & 14)

(2) Section 26(a) of the Act refers to an agreement in writing and registered under any law. Form 14A is a statutory form under the NLC relating to the dealing of land in Malaysia. On the facts, the Forms 14A must be a fit instrument for registration to enable the transfer of the lands in favour of the first defendant to be valid. Further, s 301 of the NLC governs as to when an instrument is fit for registration. Since the parties did not stand in a near relationship with each other within the meaning of s 26(a) of the Act, it follows that the transfer of the lands under the

A Forms 14A was contrary to s 26. As such, the Forms 14A were not fit for registration under s 301(c) of the NLC and were insufficient or void instruments. (paras 11, 12, 14, 15 & 16)

(3) Section 340 of the NLC provides certain circumstance under which a registered title or interest may be defeasible and thereby liable to be set aside. On the facts, the B transfer of the ownership of the lands from the plaintiffs to the first defendant was liable to be set aside pursuant to s 340(2)(b) and (3) of the NLC. (paras 18 & 19)

[54] In another case of *Tang Meng Hock v Tang Ming Seng* [2010] 1 MLJ 33; [2010] 1 CLJ 208, the Court of Appeal held that:

C (2) The issue of consideration can be determined by reference to s 26(a) of the Contracts Act 1950 which states that an agreement made without consideration is void unless it is expressed in writing and registered, and is made on account of natural love and affection between parties standing in a near relation to each other. D (para 18)

(3) It is an established principle that natural love and affection is a good and valid consideration in law. The question of whether there is in fact any natural love and affection may be determined by reference to the evidence and surrounding circumstances. (paras 19 & 20)

E (4) The parties are biological brothers and in near relation to each other, being related by actual birth. Furthermore as the family arrangements had been reduced to writing and the agreement was duly stamped under the Stamp Act, ss 47A(1) and 48, the court had no hesitation in finding that the requirements of s 26(a) of the Contracts Act 1950 were fulfilled. (para 22)

F (5) The family arrangements are therefore valid and enforceable. (para 22)

[55] The deceased and the defendant clearly are not standing in near relationship with each other within the meaning in s 26 of the Contracts Act.

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[56] The Form 14A is clearly null and void. The transfer of the land from the deceased to the defendant as alluded to earlier was not done in good faith. It is trite that where there is a question as to the good faith of a transaction between parties, one of whom stands to be the other in position of active confidence, the H burden of proving the good faith of the transaction is on the party who is in position of active confidence.

(See: *Khaw Cheng Bok & Anor v Khaw Cheng Poon & Ors* [1998] 3 MLJ 457; *Tengku Abdullah Ibni Sultan Abu Bakar & Ors v Mohd Latiff bin Shah Mohd & Ors and other appeals* [1996] 2 MLJ 265*; Lim Kim Hua v Ho Chui Lan & Anor* [1995] 3 MLJ 165; *Loi Hieng Chiong v Kon Tek Shin* [1983] 1 MLJ 31.) I

[57] The defendant and the deceased in this case had known each other for five months before the transfer of the property. In the circumstances of the case,

it cannot be unreasonable to suspect that the defendant had actively concealed the material facts and thus committed dishonesty against the plaintiffs.

[58] We agree with the plaintiffs' submission that so much precaution is needed to be exercised when dealing with an elderly and sick testator for example where medical advice as to testamentary capacity was enquired. We agreed that in this case, the attesting officer and the land officer being suspicious over the relationship between the defendant and the deceased should not have proceeded with the attestation of the memorandum of transfer and adjudication and registration thereafter.

[59] Apart from this, it was the duty of the land officer when confronted with the insufficient proof of adoption whilst an 80 years old man unaccompanied with any of his family is present before them at the land office to transfer his property worth more than RM1m to the defendant who was only known to him only five months ago, could have enquired for further evidence for his satisfaction that the transfer was made and registered in accordance with law. Otherwise the transfer is tainted with insufficient capacity to understand and appreciate the effect of the transfer due to his old age and a deteriorating medical condition.

[60] Based on the law as it stands, we see nothing in the defendant's submissions to support the appeal. The appeal is doomed to fail because the Forum 14A made between the deceased and his care giver appellant on the consideration of love and affection is void and the transfer runs contrary to s 26 of the Contracts Act 1950. As such, the transfer was invalid and ought to be set aside in limine.

[61] The deceased and the defendant do not stand in a near relationship to each other. It follows that when the transfer in Form 14A is contrary to s 26 of the Contracts Act 1950, consequently, the Form 14A being instruments of transfer prescribed under the NLC was not fit for registration under para (c) of s 301 of the National Land Code for being contrary to s 26 of the Contracts 1950. Further, we hold that as the Form 14A is an instrument which is not fit for registration, the Form 14A is incapable of registration on the basis that it is insufficient or void instrument. Form 14A is null and void for illegality and must be set aside.

[62] We agreed with the learned judge that in her finding that the transfer of the ownership of the land from the deceased under the Form 14A is liable to be set aside pursuant to sub-ss (2)(b) and (3) of s 340 of the National Land Code.

A CONCLUSION

[63] In conclusion, it is our decision that the finding of facts by the learned judge is correct and well substantiated.

B (a) the learned judge has rightly found that the deceased did not have the mental capacity to know the effect and consequences of his action;

(b) the learned judge's assessment of the evidence that the deceased affixed his thumbprint on the Form 14A without being aware or knowing the effect of his action was also correct;

C (c) the learned judge has rightly found that the defendant had taken advantage by directing the deceased to affix his thumbprint to show that the transfer of the land was genuine;

(d) The learned judge has rightly found that the Form 14A is invalid, void and should be set aside pursuant to s 26 of the Contracts Act 1950; and

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(e) the learned judge has rightly found that the defendant had unduly influenced the deceased to transfer the said land to her name.

E **[64]** Wherefore, it was our unanimous decision that the defendant's appeal was hereby dismissed with costs of RM10,000 subject to allocator fee. Deposit was refunded to be appellant/defendant.

Appeal unanimously dismissed.

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Reported by Ashok Kumar

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